



झारखण्ड गजट

असाधारण अंक

झारखण्ड सरकार द्वारा प्रकाशित

20 पौष, 1944 (श०)

संख्या – 4 राँची, मंगलवार, 10 जनवरी, 2023 (ई०)

मंत्रिमंडल (निर्वाचन) विभाग

अधिसूचना

10 जनवरी, 2023

संख्या-02/नि०न्या०वा०-16-16/2015/01--भारत निर्वाचन आयोग की अधिसूचना संख्या-82/पूर्व अनु०-1/झार०-वि०स०/(08/2015)/2022 दिनांक-23 दिसम्बर, 2022 द्वारा निर्वाचन अर्जी सं०-08/2015 में दिये गये उच्च न्यायालय, झारखण्ड, राँची के तारीख 21 नवम्बर, 2022 के आदेश से संबंधित अधिसूचना को राजकीय गजट के असाधारण अंक में प्रकाशनार्थ ।

झारखण्ड राज्यपाल के आदेश से,

के० रवि कुमार,
मुख्य निर्वाचन पदाधिकारी-सह सचिव ।

भारत निर्वाचन आयोग

अधिसूचना

23 दिसम्बर, 2022/2 पौष, 1944 शक

संख्या- 82/पूर्व अनु-1/झार०-वि०स०/(08/2015)/2022--लोक प्रतिनिधित्व अधिनियम 1951 (1951 का 43) की धारा 106 (ख) के अनुसरण में, भारत निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं० 08/2015 में दिये गये उच्च न्यायालय, झारखण्ड, रांची के तारीख 21 नवम्बर, 2022 के आदेश को प्रकाशित करता है ।

IN THE HIGH COURT OF JHARKHAND AT RANCHI**Election Petition No. 08 of 2015**

Roshan Lal Choudhary

.....

..... Petitioner

Versus

1. Nirmala Devi
2. Deepak Kumar Das
3. Manoj Kumar Sinha
4. Ramendra Kumar
5. Shivilal Mahto
6. Sanjeev Kumar
7. Aniruddh Kumar
8. Anand Kishor Paswan
9. Binod Rana
10. Bitu Kumar
11. Shahid Ali
12. Heera Gope
13. Anupam Kumar Pathak
14. Kartik Mahto
15. Gautam Tiwari
16. Dropadi Devi
17. Prabhu Oraon
18. Mrityunjay Vishwakarma
19. Leeladhan Saw
20. The Returning Officer, 22 Barkagaon Assembly Constituency, District-Ramgarh

.....

..... Respondent

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioner : Mr. V.P. Singh, Sr. Advocate
Mr. Rahul Kumar, Advocate
For the Respondent no. 1 : Mr. Arvind Kr. Lall, Advocate
For the Respondent no. 20 : M/s Vikash Pandey & J.K. Mishra, Advocates

C.A.V. ON 03.08.2022

PRONOUNCED ON 21/11/2022

1. This election petition has been filed under Sections 80, 80A and 81 of the Representation of People Act, 1951 to set aside the election of the returned candidate respondent Nirmala Devi and declare the petitioner elected from 22, Barkagaon Assembly Constituency in 2014 election.

PETITIONER'S CASE

2. Case of the election petitioner is that election commission of India notified the assembly elections in the state which were to be held in five phases in the month of November – December, 2014. District Social Welfare Officer, Ramgarh was appointed as the returning officer for holding the elections at 22, Barkagaon assembly constituency. The election was to be held in five phases in the month of November and December, 2014.

3. The petitioner Roshan Lal Choudhary had been nominated by AJSU Party as its official candidate and Respondent no.1 Nirmala Devi had been nominated by the Indian National Congress. The petitioner was the main candidate of National Democratic Alliance (N.D.A). As per the election program, calling was held on 9.12.2014 by Electronic Voting Machines for 22 Barkagaon Assembly Constituency in which there were 368 number of booths.

4. The counting of votes was held at Ramgarh College on 14 tables. The votes were counted on four tables up to 27th round and on rest of the tables up to 26th round. After counting Respondent Nirmala Devi, the returned candidate was wrongly, illegally and on the basis of void votes received by her, was declared elected on the ground that she had secured 61, 796 votes, defeating the Election Petitioner who had received only 61,341 votes.

5. It is claimed that the Election Petitioner had received maximum valid votes and therefore he should have been declared elected.
6. Challenging the election of respondent is on the ground of making false declaration/affidavit in Form 26 of the nomination form and on the ground of having received huge number of void votes. Sections 17 and 18 provide that no person shall be registered in more than one Constituency or be registered more than once in any Constituency. Respondent no.1 Nirmala Devi in her nomination paper filed before the Returning Officer had mentioned that she was of voter at Sl. No.423 of Booth No.27 having Voter Identity Card No. MKJ 09332721 of 22, Barkagaon Legislative Constituency. Respondent no.1 Nirmala Devi, was also voter of Booth No. 28, Sl. No. 927 of that constituency and see by making false and illegal declaration and by manipulations and got her name registered in the Electoral Roll of two different Booths in the same constituency so that she could cast more than one vote. She manipulated and inserted her name at two different places in the same constituency and made false declarations in Form 26 after nomination form and had thereby committed an offence under the provisions of section 31 of the Act.
7. It is also averred that the Returned Candidate herself along with her help, support, consent and collusion, of more than 1000 of voters had got themselves registered at two different places in the same constituency so that they may cast more than one vote in favour of Nirmala Devi, the Returned Candidate. It is also stated that in the dissolved House, husband of Respondent Nirmala Devi namely Yogendra Saw was the Member of Legislative Assembly from the same constituency. It is asserted that the persons referred to in Annexure-3 have casted more than one vote in favour of Respondent No.1. This was in violation of section 62 of the Act. The courts casted by such voters and different Booths are to be declared void which have been illegally counted in favour of the returned candidate need deduction from the total votes in her favour.
8. It is also averred that there had been large-scale poll rigging on the date of Polling date i.e. on 9.12.2014 at several of the Booths at the instance of and with consent and collusion of said returned candidates. Reference has been made to Booth No. 113 (Total number of votes – 857, number of Paul votes – 959) Booth No. 185 (total voters – 643, number of Paul votes – 550), Booth No. 335 (total voters – 606 number of Paul votes - 519), Booth No. 363 (total voters – 24, number of Paul votes – 703) where the polling percentage was more than 85% which considering the number of voters was highly inflated and improbable. On these Booths, the respondent Nirmala Devi had received maximum votes. The voting time was 7 AM to 3 PM about eight hours. Average voting per hour could be maximum 30-40 votes.
9. There had been noticeable differences in the number of votes actually told and mentioned in form – 17 C to that of the number of votes actually counted mentioned in form 17 A. For example, at Booth No.36 of the constituency, in the Form 17 C mention subtotal 665 numbers of Paul votes, however, at the time of counting from the same Booth 671 number of ports have been considered. The discrepancy of votes actually polled and counted is being reflected in table form:-

Sl No.	Booth No.	Total No. of Polled Votes	Total No. of Votes Counted	Difference
1.	36	665	671	+6
2.	12	585	515	-70
3.	148	582	682	+100
4.	152	850	859	+09
5.	161	676	675	-01
6.	172	322	537	+215
7.	178	926	922	-04
8.	229	893	527	-366
9.	262	302	304	+02
10.	269	255	261	+06
11.	295	433	415	+18
12.	323	1252	969	-283
13.	333	720	620	-100
14.	341	613	611	-02
15.	365	672	669	-03

10. The discrepancy with respect to votes polled and mentioned in Form 17 A and 17 C to that of the counted votes had been noticeable which ought to have been brought to the notice of the election commission as per the guidelines. The CCTV recording of EVM machines was purposely interrupted and stopped. The valid votes of the petitioner were not counted, but invalid votes of the respondent Devi in postal ballots were counted in her favour. Most of the votes polled by the returned candidate were barred votes.

CASE OF THE RESPONDENTS

11. Respondent no.1 Nirmala Devi, appeared and filed a written statement. It is averred that the public opinion was in favour of the answering respondent and the petitioner had no chance to win the election. Petitioner having lost the election is trying to get himself declared successful by institution of frivolous litigations which are devoid of any merit. The answering respondent one the election on the basis of valid votes.

12. It has been denied that the respondent had sworn any false affidavit in the nomination paper. At the time of scrutiny of the nomination papers no objection from any corner was raised. The answering respondent has no information or knowledge to the effect that her name is also there as a voter of Booth No.28, Serial No.927 of 22, Barkagaon Assembly Constituency. The petitioner had never applied for inclusion of a name in the said booth, nor had the ever casting vote in the said booth. It is further asserted that this petitioner had no knowledge about the inclusion of some of the voters in two different places of the same constituency. There is nothing on record to suggest in whose favour such voters had cast their vote. As the election was conducted by secret ballot, it is not known in whose favour the persons had cast their vote.

13. The petitioner had an opportunity to raise objection in the light of section 62 of the Representation of People Act.

14. The election officer and the authorities entrusted with the election duty had rejected large number of illegal votes and only valid book votes had been counted.

15. Respondent No.7 Anirudh Kumar, who also contested the election, has filed separate written statement. He has supported the case of the plaintiff that there had been apparent violation of rules and regulations in preparation of the electoral role and observance of model code of conduct. There had been wide scale malpractice, which has materially affected the result of the election thereby frustrating the mandate of the people. The returned candidate got her name and the names of near and dear one inserted at two different Booths in the same constituency so that they could cast their vote more than once. It has been asserted that there are more than 1200 voters who have their names at two different places in the same constituency. It has also been alleged that the voters and supporters were threatened by the supporters of the returned candidate.

16. Respondent no.20 is the returning officer of the said constituency. It is averred that out of 1024 names are listed to be figuring twice in the electoral rolls, there are only 765 persons whose names have been recorded in two different electoral rolls. Out of the 765 persons only 171 persons have voted twice. The claim of the petitioner raised to fresh pleading raised by I.A No.5165 of 2016, claiming that of 305+45 that is 350 persons having voted twice and 10 persons having voted three times contained in Annexure –1 series was fit to be rejected as it was beyond the pleadings. Similar pleas having been taken in this I.A No.5165 of 2016, being beyond the pleading was fit to be rejected.

17. On the basis of the pleadings of the parties the following issues have been framed:
 - I. Whether the Election Petition for the relief (s) claimed therein by the petitioner is maintainable and fit to be allowed?
 - II. Whether respondent no.1 Nirmala Devi got her name inserted at two places that is at Sl. No. 423 of Booth No.27 and Sl. No.927 at Booth No.28 of 22, Barkagaon Assembly Constituency and thereby violated the provisions of sections 17 and 18 of the Representation of the People Act, 1951?
 - III. Whether Respondent no.1 Nirmala Devi got benefit due to double voting made by about thousands of voters who got their name entered at two places and they voted?
 - IV. Whether the result of the election has materially been affected due to difference of votes polled as stated in Form 17 A and votes counted as stated in Form 17 C?
 - V. Whether the petitioner is entitled to be declared elected?
 - VI. For what relief the petitioner is entitled in this case?
18. Altogether three witnesses have been examined on behalf of the Election Petitioner and the following documents have been adduced into evidence:
 - Ext 1 - W.S. (R-20) dated 18.01.2016 (entire)
 - Ext 1/1 - Signature of Monika Rani Tuti (at page 60)
 - Ext 2 - I.A. – 1188 / 16 (entire) Result of Inspection
 - Ext 2/1 - Signature of Election Petitioner (at page 12)
 - Ext 3 - C.A. (RO) to I.A. 3849/17 (entire)
 - Ext 3/1 - Signature of Monika Rani Tuti (R.O.)
 - Ext 4 - I.A. No. 5949/ 15 (entire I.A.)
 - Ext 5 - Annexure 4 (Interrogatories) in I.A. No. 4243/ 16
 - Ext 6 - Relevant Portion of order dated 03.02.2017 (O/s)
 - Ext 7 - Annexure B of S.A. (R.O.) dated 18.04.2017.
 - Ext 1/2 - Para 44 of W.S. (R-20) dated 18.01.2016 (at page 34)
 - Ext 1/3 - Para 45 of W.S. (R-20) dated 18.01.2016 (at page 35)
 - Ext 7/1 - The Signature of Kuldip Mahto in SA (R.O.) (of Exhibits 7)

19. One Document has been marked as Ext. A on behalf of the defence.

Issue No.II

20. It is admitted position that there had been dual entries of the returned candidate as well as some other voters. Returning officer R-20 has admitted in that there were 765 such cases of dual entries, out of which 171 voters had cast their vote twice. It is the Electoral Registration Officer (ERO) who prepares the voter-list, therefore if there are evidence of repetitions of the names in the voter list, it is the ERO who is responsible for the same and not the returned candidate, unless there is evidence to the contrary. There is no evidence on record to show that the returned candidate was in any manner responsible for the dual entries. It has been held in (1996) 4 SCC 53 that inclusion of name of voter in the electoral roll of more than one constituency or at more than one place in the same constituency shall not render the election void.

This issue is, accordingly, is answered in the negative against the election petitioner.

21. Issue nos.III and IV are taken together.

The main plea of the Election Petitioner is that returned candidate won election by slender margin of 411 no. of votes, and this margin was due to dual cast of votes by her supporters and family members who had got their names entered in two places in different electoral booths. In support of this contention, in Para-45 of the written statement filed by respondent no.20, who is Returning Officer, 22 Barkagaon Constituency is cited wherein it stated that there were 171 candidates whose names had been entered at two places and that they had voted twice. This is not going to materially affect the election result, as even if the dual votes cast by these 171 persons/votes is deducted, it will reduce the total called votes by 342 and not materially affect the result. Further, in secret ballot no inference can be drawn on whose side these dual votes had been cast. Even if it is accepted that there had been dual voting, an inference cannot be drawn that voting favoured the returned candidate.

The plaintiff has failed to prove that the double voting resorted to by some of the voters benefited the returned candidate so as to materially affect the election result.

Both these issues are, accordingly, answered in the negative against the election petitioner.

22. In view of the above findings the plaintiff is not entitled to any relief sought for. Issues Nos. I, V and VI are answered against the Election Petitioner.

The suit is dismissed on contest. Parties shall bear their own cost.

Gautam Kumar Choudhary, J.,

Jharkhand High Court, Ranchi
Dated the 21st November, 2022
AFR / AKT

आदेश से,
अरविन्द आनन्द,
प्रधान सचिव
भारत निर्वाचन आयोग

ELECTION COMMISSION OF INDIA

NOTIFICATION23rd December, 2022/ 2 Pausa, 1944 (Saka)

No. 82/ ES-1/ JKD-LA/ (08/ 2015)/ 2022 --In pursuance of Section 106(b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Order dated the 21st November, 2022 of the High Court of Jharkhand, Ranchi in Election Petition No. 08 of 2015.

IN THE HIGH COURT OF JHARKHAND AT RANCHI**Election Petition No. 08 of 2015**

Roshan Lal Choudhary

.....

..... Petitioner

Versus

21. Nirmala Devi
22. Deepak Kumar Das
23. Manoj Kumar Sinha
24. Ramendra Kumar
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37. Prabhu Oraon
38. Mrityunjay Vishwakarma
39. Leeladhan Saw
40. The Returning Officer, 22 Barkagaon Assembly Constituency, District-Ramgarh

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..... Respondent

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioner : Mr. V.P. Singh, Sr. Advocate
Mr. Rahul Kumar, Advocate
For the Respondent no. 1 : Mr. Arvind Kr. Lall, Advocate
For the Respondent no. 20 : M/s Vikash Pandey & J.K. Mishra, Advocates

C.A.V. ON 03.08.2022

PRONOUNCED ON 21/11/2022

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3. The petitioner Roshan Lal Choudhary had been nominated by AJSU Party as its official candidate and Respondent no.1 Nirmala Devi had been nominated by the Indian National Congress. The petitioner was the main candidate of National Democratic Alliance (N.D.A). As per the election program, calling was held on 9.12.2014 by Electronic Voting Machines for 22 Barkagaon Assembly Constituency in which there were 368 number of booths.

4. The counting of votes was held at Ramgarh College on 14 tables. The votes were counted on four tables up to 27th round and on rest of the tables up to 26th round. After counting Respondent Nirmala Devi, the returned candidate was wrongly, illegally and on the basis of void votes received by her, was declared elected on the ground that she had secured 61, 796 votes, defeating the Election Petitioner who had received only 61,341 votes.

5. It is claimed that the Election Petitioner had received maximum valid votes and therefore he should have been declared elected.
6. Challenging the election of respondent is on the ground of making false declaration/affidavit in Form 26 of the nomination form and on the ground of having received huge number of void votes. Sections 17 and 18 provide that no person shall be registered in more than one Constituency or be registered more than once in any Constituency. Respondent no.1 Nirmala Devi in her nomination paper filed before the Returning Officer had mentioned that she was of voter at Sl. No.423 of Booth No.27 having Voter Identity Card No. MKJ 09332721 of 22, Barkagaon Legislative Constituency. Respondent no.1 Nirmala Devi, was also voter of Booth No. 28, Sl. No. 927 of that constituency and see by making false and illegal declaration and by manipulations and got her name registered in the Electoral Roll of two different Booths in the same constituency so that she could cast more than one vote. She manipulated and inserted her name at two different places in the same constituency and made false declarations in Form 26 after nomination form and had thereby committed an offence under the provisions of section 31 of the Act.
7. It is also averred that the Returned Candidate herself along with her help, support, consent and collusion, of more than 1000 of voters had got themselves registered at two different places in the same constituency so that they may cast more than one vote in favour of Nirmala Devi, the Returned Candidate. It is also stated that in the dissolved House, husband of Respondent Nirmala Devi namely Yogendra Saw was the Member of Legislative Assembly from the same constituency. It is asserted that the persons referred to in Annexure-3 have casted more than one vote in favour of Respondent No.1. This was in violation of section 62 of the Act. The courts casted by such voters and different Booths are to be declared void which have been illegally counted in favour of the returned candidate need deduction from the total votes in her favour.
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10. The discrepancy with respect to votes polled and mentioned in Form 17 A and 17 C to that of the counted votes had been noticeable which ought to have been brought to the notice of the election commission as per the guidelines. The CCTV recording of EVM machines was purposely interrupted and stopped. The valid votes of the petitioner were not counted, but invalid votes of the respondent Devi in postal ballots were counted in her favour. Most of the votes polled by the returned candidate were barred votes.

CASE OF THE RESPONDENTS

11. Respondent no.1 Nirmala Devi, appeared and filed a written statement. It is averred that the public opinion was in favour of the answering respondent and the petitioner had no chance to win the election. Petitioner having lost the election is trying to get himself declared successful by institution of frivolous litigations which are devoid of any merit. The answering respondent one the election on the basis of valid votes.

12. It has been denied that the respondent had sworn any false affidavit in the nomination paper. At the time of scrutiny of the nomination papers no objection from any corner was raised. The answering respondent has no information or knowledge to the effect that her name is also there as a voter of Booth No.28, Serial No.927 of 22, Barkagaon Assembly Constituency. The petitioner had never applied for inclusion of a name in the said booth, nor had the ever casting vote in the said booth. It is further asserted that this petitioner had no knowledge about the inclusion of some of the voters in two different places of the same constituency. There is nothing on record to suggest in whose favour such voters had cast their vote. As the election was conducted by secret ballot, it is not known in whose favour the persons had cast their vote.

13. The petitioner had an opportunity to raise objection in the light of section 62 of the Representation of People Act.

14. The election officer and the authorities entrusted with the election duty had rejected large number of illegal votes and only valid book votes had been counted.

15. Respondent No.7 Anirudh Kumar, who also contested the election, has filed separate written statement. He has supported the case of the plaintiff that there had been apparent violation of rules and regulations in preparation of the electoral role and observance of model code of conduct. There had been wide scale malpractice, which has materially affected the result of the election thereby frustrating the mandate of the people. The returned

candidate got her name and the names of near and dear one inserted at two different Booths in the same constituency so that they could cast their vote more than once. It has been asserted that there are more than 1200 voters who have their names at two different places in the same constituency. It has also been alleged that the voters and supporters were threatened by the supporters of the returned candidate.

16. Respondent no.20 is the returning officer of the said constituency. It is averred that out of 1024 names are listed to be figuring twice in the electoral rolls, there are only 765 persons whose names have been recorded in two different electoral rolls. Out of the 765 persons only 171 persons have voted twice. The claim of the petitioner raised to fresh pleading raised by I.A No.5165 of 2016, claiming that of 305+45 that is 350 persons having voted twice and 10 persons having voted three times contained in Annexure –1 series was fit to be rejected as it was beyond the pleadings. Similar pleas having been taken in this I.A No.5165 of 2016, being beyond the pleading was fit to be rejected.

17. On the basis of the pleadings of the parties the following issues have been framed:

- I. Whether the Election Petition for the relief (s) claimed therein by the petitioner is maintainable and fit to be allowed?
- II. Whether respondent no.1 Nirmala Devi got her name inserted at two places that is at Sl. No. 423 of Booth No.27 and Sl. No.927 at Booth No.28 of 22, Barkagaon Assembly Constituency and thereby violated the provisions of sections 17 and 18 of the Representation of the People Act, 1951?
- III. Whether Respondent no.1 Nirmala Devi got benefit due to double voting made by about thousands of voters who got their name entered at two places and they voted?
- IV. Whether the result of the election has materially been affected due to difference of votes polled as stated in Form 17 A and votes counted as stated in Form 17 C?
- V. Whether the petitioner is entitled to be declared elected?
- VI. For what relief the petitioner is entitled in this case?

18. Altogether three witnesses have been examined on behalf of the Election Petitioner and the following documents have been adduced into evidence:

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- Ext 7/1 - The Signature of Kuldip Mahto in SA (R.O.) (of Exhibits 7)

19. One Document has been marked as Ext. A on behalf of the defence.

Issue No.II

20. It is admitted position that there had been dual entries of the returned candidate as well as some other voters. Returning officer R-20 has admitted in that there were 765 such cases of dual entries, out of which 171 voters had cast their vote twice. It is the Electoral Registration Officer (ERO) who prepares the voter-list, therefore if there are evidence of repetitions of the names in the voter list, it is the ERO who is responsible for the same and not the returned candidate, unless there is evidence to the contrary. There is no evidence on record to show that the returned candidate was in any manner responsible for the dual entries. It has been held in (1996) 4 SCC 53 that inclusion of name of voter in the electoral roll of more than one constituency or at more than one place in the same constituency shall not render the election void.

This issue is, accordingly, is answered in the negative against the election petitioner.

21. Issue nos.III and IV are taken together.

The main plea of the Election Petitioner is that returned candidate won election by slender margin of 411 no. of votes, and this margin was due to dual cast of votes by her supporters and family members who had got their names entered in two places in different electoral booths. In support of this contention, in Para-45 of the written statement filed by respondent no.20, who is Returning Officer, 22 Barkagaon Constituency is cited wherein it stated that there were 171 candidates whose names had been entered at two places and that they had voted twice. This is not going to materially affect the election result, as even if the dual votes cast by these 171 persons/votes is deducted, it will reduce the total called votes by 342 and not materially affect the result. Further, in secret ballot no inference can be drawn on whose side these dual votes had been cast. Even if it is accepted that there had been dual voting, an inference cannot be drawn that voting favoured the returned candidate.

The plaintiff has failed to prove that the double voting resorted to by some of the voters benefited the returned candidate so as to materially affect the election result.

Both these issues are, accordingly, answered in the negative against the election petitioner.

22. In view of the above findings the plaintiff is not entitled to any relief sought for. Issues Nos. I, V and VI are answered against the Election Petitioner.

The suit is dismissed on contest. Parties shall bear their own cost.

Gautam Kumar Choudhary, J.,

Jharkhand High Court, Ranchi
Dated the 21st November, 2022
AFR / AKT

By order,

ARVIND ANAND,
PRINCIPAL SECRETARY
ELECTION COMMISSION OF INDIA
